

REMARKS

I. Overview

These remarks are set forth in response to the Latest Final Office Action. Presently, claims 10-21 are pending in the Patent Application. Claims 10, 14, and 18 are independent in nature. In the Latest Final Office Action, claims 18-21 have been rejected under 35 U.S.C. § 101. Further, claims 10-21 have been rejected under 35 U.S.C. § 103(a).

In response, although Applicant disagrees with the rejections, Applicant has amended claim 18 to address the rejection under 35 U.S.C. § 101. Applicant has also slightly modified the language of independent claims 10, 14, and 18 in an effort to even more clearly define the invention and to facilitate expeditious prosecution. Entry of the amendments is requested because they do not raise any new issue that would require a new search.

II. Claim Rejections – 35 USC § 101

On page 5 of the Latest Final Office Action, Examiner rejects claims 18-21 under 35 U.S.C. § 101 as being directed to non-statutory subject

matter. Although Applicant disagrees with the rejection, Applicant has amended claim 18 to recite a “computer-readable storage device” as suggested by the Examiner on page 2 of the Latest Final Office Action.

III. Rejections Under 35 U.S.C. § 103

On pages 5-8 of the Latest Final Office Action, Examiner rejects claims 10, 12-14, 16-18, and 20-21 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,493,703 to Knight in view of U.S. Patent No. 6,735,770 to Yeager et al. (Yeager), and claims 11, 15, and 19 under 35 U.S.C. § 103(a) as being unpatentable over Knight and Yeager in view of U.S. Patent Application Publication No. 2002/0141584 by Razdan et al. (Razdan).

With respect to the Examiner's determination of obviousness, Section 2141 of the Manual of Patent Examining Procedure (M.P.E.P.) sets forth guidelines intended to assist personnel of the United States Patent and Trademark Office in making a proper determination of obviousness under 35 U.S.C. 103, and to provide an appropriate supporting rationale in view recent judicial developments in regard to 35 U.S.C. § 103. Included as part of M.P.E.P. 2141 are the "Examination Guidelines for Determining

Obviousness Under 35 U.S.C. 103 in View of the Supreme Court Decision
in KSR International Co. v. Teleflex Inc., " 73 Fed. Reg. 57,526 (2007)
(hereinafter the Examination Guidelines). Section III of M.P.E.P. 2141 is
entitled "Rationales To Support Rejections Under 35 U.S.C. 103."

Referring to Section III of the Examination Guidelines, the following
is a list of rationales that may be used to support a finding of obviousness
under 35 U.S.C. § 103:

- (A) Combining prior art elements according to known methods to yield predictable results;**
- (B) Simple substitution of one known element for another to obtain predictable results;
- (C) Use of known technique to improve similar devices (methods, or products) in the same way;
- (D) Applying a known technique to a known device (method, or product) ready for improvement to yield predictable results;
- (E) "Obvious to try" - choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success;
- (F) Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations would have been predictable to one of ordinary skill in the art;
- (G) Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention.

Examiner indicated on page 4 of the Latest Final Office Action that rationale
(A) has been used.

With respect to rationale (A), the Examination Guidelines set forth a precise process for which the Examiner must follow in order to establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a). Specifically, to reject a claim based on this rationale, Office personnel must resolve the Graham factual inquiries. Thereafter, Office personnel must then articulate the following:

- (1) **a finding that the prior art included each element claimed**, although not necessarily in a single prior art reference, with the only difference between the claimed invention and the prior art being the lack of actual combination of the elements in a single prior art reference;
- (2) a finding that one of ordinary skill in the art could have combined the elements as claimed by known methods, and that in combination, each element merely would have performed the same function as it did separately;
- (3) a finding that one of ordinary skill in the art would have recognized that the results of the combination were predictable; and
- (4) whatever additional findings based on the Graham factual inquiries may be necessary, in view of the facts of the case under consideration, to explain a conclusion of obviousness.

In articulating a finding that the prior art included each element claimed in a rejected claim, Examiner must establish a proper claim construction and then compare the properly construed claim to the prior art.¹ It is the position of Applicant that under M.P.E.P. 2141 and rationale (A) of the Examination Guidelines set forth therein, Examiner has not adequately articulated a finding that the prior art included each properly construed element claimed

¹ Medichem, S.A. v. Rolabo, S.L., 353 F.3d 928, 933 (Fed. Cir. 2003) (internal citations omitted).

with the only difference between the claimed invention and the prior art being the lack of actual combination of the elements in a single prior art reference.

In this regard, claim 10 recites a message system servicing method performed within a message server. For the convenience of the Examiner, claim 10 is reproduced herein as follows:

10. A message system servicing method performed within a message server, comprising:
 - receiving, from a message publisher, a request to create a topic;
 - subdividing the topic into a plurality of subtopics;
 - storing, within separate ones of the plurality of subtopics, messages posted to the topic;
 - receiving, from a message subscriber, a request to retrieve messages from the topic;
 - upon determining that the messages exist, for the requested topic, within the separate ones of the plurality of subtopics, creating a separate retrieval thread of execution for each specific subtopic and subscriber pair; and
 - retrieving the messages, from within the separate ones of the plurality of subtopics, respectively using the separate retrieval thread of execution for each subtopic and subscriber pair.

Integral to claim 10 (and also claims 14 and 18) is the creation of a separate retrieval thread of execution for each specific subtopic and subscriber pair and the retrieving of the messages, from within the separate ones of the plurality of subtopics, respectively using the separate retrieval thread of execution for each subtopic and subscriber pair. Applicant submits

that at least these limitations are not disclosed by any of the cited references or any combination thereof. In rejecting these limitations, Examiner stated on page 6 of the Latest Final Office Action the following:

Knight also discloses "retrieving the messages, from within the separates ones of the plurality of subtopics, respectively using the separate retrieval threads of execution for each specific subtopic" as a series of software robots (separate threads) for retrieving content (abstract, col. 5 ln. 45-49, col. 91n. 25-54, col. 10 ln. 19-27, Fig. 4).

Knight not explicitly disclose "upon determining that the messages exist, for the request topic, within the separate ones of the plurality of subtopics, creating a separate retrieval thread of execution for each specific subtopic" however it does suggest this (especially considering the Board's finding on pg. 9 concerning claim 5) by teaching that a customized robot is invoked upon query (col. 6 ln. 6-10). Nevertheless this is explicitly disclosed by Yeager as initializing a thread for message retrieval (col. 7 ln. 65- col. 8 ln. 17). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Knight with the thread initialization taught by Yeager for the purpose of processing requests. It is well known in the art to use multiple threads to handle requests (as evidenced by both Knight and Yeager). Therefore, this is merely the combination of known elements according to their established function in order to yield a predictable result.

Applicant respectfully disagrees with the Examiner's analysis. For the convenience of the Examiner, the paragraphs of the references cited by Examiner are reproduced herein as follows:

An online message board system monitors message traffic generated by subscribers so that intelligent decisions can be made concerning what types of content to locate and retrieve, what priority to use for locating such content, how to organize such content for ease of access by the subscribers, etc. A series of software robots are used to locate, retrieve and sort the content as derived from other online news groups. By studying subscriber message traffic, the system can self-tune itself automatically to constantly adjust content retrieval, storage and presentation in response to

changing community interests, desires, and the like. Because subscriber feedback is accounted for and incorporated into the design of the message board system, this enhances the experience for online users, resulting in increased system usage, subscriber retention characteristics, etc. (Knight, abstract)

Yet another related object of the present invention is to provide an online data service which intelligently stores message content, and dynamically builds additional content of interest to the users of the same in the form of content subject matter groupings, classes and sub-classes, so that content query clusters are easily accessible and reviewable at any time by users without additional processing or time delays; (Knight, col. 5 ln. 45-49)

Returning to the operation of the search robots in FIG. 2: search robots are well-known in the art, and a basic variation of these can be found in conventional online search engines operated by such online providers as Yahoo!, Excite, AOL, etc. These search robots can be easily modified to perform various tasks associated with the present inventions. In particular, a first kind of extraction robot 230 of the present invention periodically retrieve content (i.e., material that may be of general interest to the subscribers to the online service provider) from outside source such as UseNet and/or other online message board systems. The content is "extracted" from these sources according to set of rules, filters or criteria specified by the online provider, and/or gleaned from community based traffic monitorings as noted below. This process can be highly automated so that, for example, a particular search robot can be instructed to search at a particular time of the day for information concerning a particular company at a particular third party internet server. The benefits of this approach include the fact that the message board system 200 provides up-to date, comprehensive content on a variety of subjects. Furthermore, this content is intelligently classified in accordance with the concepts commonly understood by the user and/or the community, so that the need for manual, cumbersome review of individual messages throughout dozens of newsgroups with non-illuminating identifiers (newsgroups tend to have cryptic, non-helpful names that do not distinguish between subject areas very well) is substantially eliminated. This results in greater enjoyment and less frustration for users during an interactive online session. (Knight, col. 9ln. 25-54)

In contrast to community search robots 231, whose efforts result in compilations/indices usable by the community as a whole, customized search robots 232 create logical collections of messages based on individual user filtering criteria. To ensure that the independent functionality provided by customized search robots 232 does not

overwhelm server 220, only a limited number of such robots are made available to subscribers. (Knight, col. 10 ln. 19-27)

A user query can also be handled, however, when it is instead based on customized query parameters for a particular user, so that a customized search robot on the message management system is invoked for locating the relevant electronic messages. (Knight, col. 6 ln. 6-10)

At step 208 a selected child process initializes a thread for managing the accepted connection. The accepted connection is managed based on the protocol being used by the client, e.g. IMAP or POP. In the described embodiment, each child process has an initialization thread to initialize new active connection threads. In other preferred embodiments, new active connection threads can be initialized outside the child process. At step 210 the selected child process and thread manage the client request. Examples of a thread managing a client request such as copying a message or retrieving a message, are discussed in detail below. At this stage, a master-slave relationship is created between the newly created thread (slave) for the client (master). When the client terminates the connection or times-out from being idle for a predetermined time, the parent process begins thread clean-up at step 212. At thread clean-up and exit, all resources associated with the thread are made available for other threads. After thread clean-up, the message access procedure for a client is complete. (Yeager, col. 7 ln. 65- col. 8 ln. 17)

As can be seen from the above quoted paragraphs, Knight discloses a series of software robots that are used to locate, retrieve and sort the content, and customized search robots that create logical collections of messages based on individual user filtering criteria. However, Knight does not disclose the inventive concept of the Applicant's invention, namely creating a separate retrieval thread for each specific subtopic and subscriber pair and retrieving messages, from within separates ones of the plurality of subtopics, respectively using the separate retrieval thread of execution for each subtopic and subscriber pair. It is noted that in Knight the search robots are

not created for corresponding specific subtopic and subscriber pairs. In other words, in Knight there is not any one-to-one correspondence between a search robot and a specific subtopic and subscriber pair. By establishing subscriber threads on a subtopic basis rather than a complete topic basis, the Applicant's invention has the advantages that message traffic overruns can be avoided and an enhanced scalability can be provided in the messaging system.

Yeager discloses initializing by a selected child process a thread for managing the accepted connection. However, Yeager does not cure the deficiencies of Knight as discussed above.

Examiner stated in the section entitled "Response to Arguments" on page 3 of the Latest Final Office Action the following:

With respect to applicant's comment on the underlined portion, applicant should be aware that claims are interpreted using the broadest reasonable interpretation. A term recited as A/B, does not require A and B. If applicant meant for the claim to require "each specific subtopic and subscriber pair" as if they were two separate and distinct items the claim should be written as such instead of using vague language. Since Knight clearly teaches retrieving messages using separate threads for each subtopic (i.e. search robot extracts data for specific subject, see col. 9 ln. 25-54), it discloses the limitation in question.

Although Applicant believes that a “subtopic/subscriber pair” clearly requires both a subtopic and a subscriber because a “pair” by its plain meaning requires two elements, Applicant has modified the claim language to recite a “subtopic and subscriber pair”. Knight describes in col. 9 ln. 25-54 that a particular search robot can be instructed to search at a particular time of the day for information concerning a particular company at a particular third party internet server. However, Knight does not create a separate retrieval thread for each specific subtopic and subscriber pair. It is noted that in Knight the particular search robot is not tied with a specific subtopic and subscriber pair; rather, the particular search robot can be instructed, for example, to search at another time of the day for information concerning another company at another third party internet server. In comparison, in the Applicant’s invention, a separate retrieval thread is tied with (or created for) a specific subtopic (requested by a specific subscriber) within a topic published by a specific publisher.

In view of the forgoing, Applicant believes that Examiner has failed to find that the prior art included each properly construed element claimed. Accordingly, Applicant submits that the Examiner has not established a prima facie case obviousness.

IV. Conclusion

Applicant respectfully requests the withdrawal of the rejections under 35 U.S.C. §§ 101 & 103 owing to the amendments and foregoing remarks. The Applicant requests that the Examiner call the undersigned if clarification is needed on any matter within this Amendment, or if the Examiner believes a telephone interview would expedite the prosecution of the subject application to completion.

Respectfully submitted,

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